

of the application, subject to examination by interested persons. An applicant's inability to produce such demonstration upon reasonable request by the Commission, shall be deemed adequate reason for return of the application to the applicant. Any site owner/manager found to have engaged in any scheme which includes the production of false or misleading information for the purpose of supporting abusive applications should be subject to paying a substantial forfeiture to the Commission. Finally, the Commission should accept from all site owners/managers protests of pending applications or licenses which propose operation on a site operated or managed by the protesting party for which no assurance of site availability has been attained by the applicant or licensee.

The Commission's suggestion that frequency coordinating entities be employed to assist in curtailing abuses by application mills is respectfully rejected by SBT. Instead, SBT recommends that the Commission avoid further placing coordinators at odds with applicants by attempting to increase the investigative capacity of coordinators. Such attempt to burden the coordinators with this duty will only exacerbate an already contentious relationship, which the Commission is seeking to ameliorate in a different proceeding to "refarm" private radio spectrum. Instead, the Commission should be attempting to strengthen an agency relationship between applicant and coordinator which is consistent with the introduction of greater competition in the area of frequency coordinations. SBT further notes that the Commission's efforts in the refarming docket have eliminated the need for coordinators to be representative of any class of applicants and licensees. Accordingly, the Commission should recognize its actions in that proceeding and apply its logic to this one, by not saddling coordinators with additional duties which will detract from the competitive nature of coordination the agency is attempting to foster.


### Conclusion

As noted above, SBT has attempted to address all areas of concern to the Commission in its Further Notice. SBT strongly urges the Commission to employ this opportunity to increase small business participation in the delivery of paging services and SBT believes that the methods suggested herein will go far in meeting that goal.

Respectfully submitted,

SMALL BUSINESS IN TELECOMMUNICATIONS

By

  
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## **SUGGESTED RULES FOR PARTITIONING/DISAGGREGATION**

### **Partitioning Of Licenses Following Grant By Competitive Bidding**

Licensees of stations granted pursuant to the competitive bidding rules within this Part may assign to third parties, not identified within the partitioner's application pursuant to Section 22.221(a), a portion of their authority in accord with the following:

(a) If a Partitioner is not an entity identified under Section 22.223(b) or a rural telephone company, such Partitioner shall not make a partial assignment of its license to any partitionee who is not (i) identified under Section 22.223(b); or (ii) a rural telephone company or (iii) an operator on the subject frequency in the area to be partitioned or within an adjacent geographic area.

(b) No partial assignment of a geographic area license will be allowed if the area to be assigned boundaries are not coterminous with county boundaries.

(c) Following completion of construction of geographic area license in accord with the construction periods set forth within this Part, a licensee may engage in partitioning of the constructed system without limitation, except that all such partitioning shall comply with the geographic limitations on partitioning included within above subsection (b).

(d) Assignment of a portion of partitioner's obligation to make auction payments to the Commission shall be limited to partitioners who are identified within Sections 22.223(b) and who elected to make time payments to the Commission. The assignee may be assigned payment of a pro rata portion of the original grant of authority based on the population which is unserved by the subject frequency by existing licensees at the time of grant of partitioner's license, subject to the same payment terms as the partitioner, provided however, partitionees which are not identified within Section 22.223(b) shall pay to the Commission concurrently with the filing of the application for partial assignment of the license an amount equal to the pro rata portion of the balance of the principal payment still owed by the partitioner plus the pro rata portion of partitioner's bidding credits received upon grant plus interest.

(e) A default by the partitionee to make timely payments to the Commission in accord with subsection(d) shall not create an obligation in the partitioner. However, if the partitioner has guaranteed the partitionee's payment in the application for partial assignment, the Commission shall notify the partitioner of its intention to cancel the partitionee's license and provide the partitioner 30 days to cure the partitionee's default and accept reassignment to it of the partitionee's license. Partitioner's future payments to the Commission for their license shall be adjusted downward to reflect any payments to principal collected or to be collected by partitionees.

(f) Partitioners which are not identified under Section 22.223(b) shall be entitled to a rebate of an amount of their auction payment following partitioning which is equal to the pro rata value paid at auction for the partitioned area multiplied by the amount of bidding credits for which the partitionee would have been eligible. Such rebate shall only be paid to partitioners following partitionee's notification to the Commission of completion of construction within the partitioned area.

(g) In the event of default without cure of a partitionee's obligation to make assigned payments to the Commission or to construct its system in a timely manner, the Commission shall employ competitive bidding procedures to issue a new license for such partitioned area among entities identified under Section 22.223(b) and rural telephone companies.

(h) The license term for licenses granted via partitioning shall be equal to the license granted to the partitioner, provided there is at least one year remaining in the partitioner's license, otherwise the license term shall be one year and upon renewal, the license shall be made co-terminus with the partitioner's license term. Partitionee shall be entitled to all rights granted to the partitioner for the partitioned area, including a renewal expectancy.

(i) During the partitioner's construction period, no partitionee identified under Section 22.223(b) or which is a rural telephone company shall be made to pay to a partitioner an amount greater than the pro rata portion of the partitioner's auction payment relative to the population within the partitioned area which is unserved at the time of grant of partitioner's license by the relevant frequency(ies), for the right to receive partial assignment of a partitioned license. Partitioners who assign a portion of their obligation to make time payments to the Commission to persons identified under Section 22.223(b) shall not be entitled to receive any other consideration from partitionees.

(j) Partitioners' authority to operate within a partitioned area shall be automatically cancelled following partitioning, including any authority to operate existing systems, whenever constructed or licensed.

### **Construction of Systems Partitioned Following Grant By Competitive Bidding**

Licensees of stations granted pursuant to the competitive bidding rules within this Part which assign to third parties, not identified within the partitioner's application pursuant to Section 22.221(a), a portion of their authority and the assignees of such partitioned area licenses, shall construct their facilities in accord with the following:

(a) Within one year of grant of assignment of the partitioned license, the partitionee must construct and make operational sufficient base stations per county within the partitioned area, to serve at least 70% of the population within the partitioned area which was unserved by a protected, existing stations, as determined by the methods prescribed at Section 22.537.

(b) Partitioners may rely on the partitionee's obligation to construct within the partitioned area in partitioner's meeting its construction requirements.

(c) A partitionee's failure to construct in a timely manner within the partitioned area shall create no additional obligation on the partitioner, except the partitioner shall not be entitled to reassignment of authority for the partitioned area.

(d) In the event that a partitionee fails to timely construct within the partitioned area, the partitionee's license shall cancel automatically and the Commission shall employ competitive bidding procedures to issue a new license for such partitioned area among entities identified under Section 22.223(b) and rural telephone companies.

## **Disaggregation**

Licensees of stations authorized by grant of authority arising out of successful participation in competitive bidding may disaggregate the spectrum authorized to such licensees in the following manner:

(a) Disaggregators shall not be entitled to rely on the construction of facilities performed by disaggregatees for the purpose of meeting disaggregator's construction requirements.

(b) During the time prior to disaggregators' completion of construction of its authorized system, disaggregators may only partially assign spectrum to entities identified under Section 22.223(b) and rural telephone companies.

(c) Parties engaging in disaggregation as either assignor or assignee shall be subject to the same construction requirements, license terms, payment terms, renewal expectancy, cancellation of authority, eligible areas, and obligations as applied to partitioners and partitionees of geographic area licenses, except those specifically amended within this Section. Cancellation of a disaggregatee's authority for failure to construct shall result in the Commission employing competitive bidding procedures among entities identified in Section 22.223(b) and rural telephone companies for reissuance of the license.

(d) Disaggregators shall not be entitled to any rebate from the Commission for disaggregating to entities identified under Section 22.223(b). Payments from disaggregatees to disaggregators or the Commission shall be calculated to reflect the amount of spectrum involved in the disaggregation as a portion of the spectrum authorized to the disaggregator.